

What the New Produce Regulations Mean for Restaurant Owners

Using the popular restaurant meal of a burger and fries to understand the context of these new rules

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By Jennifer Allen

Restaurant owners may be wondering how the [FDA's new produce safety regulations](#) affect them. Through these new regulations, the FDA has attempted to tackle the growing number of outbreaks involving produce traditionally thought of by consumers as safe to eat (for example spinach and Romaine lettuce). The regulations broadly require farms of a certain size to develop processes relating to employee hygiene and training, agricultural water, biological soil amendments (compost, manure and the like), buildings and equipment to decrease the risk of contamination of produce during growing, harvesting, packing or holding. But what does that mean for the restaurant owner?

The simplest way to get a good overview of the regulations is to consider them in the context of a popular restaurant meal: the cheeseburger and fries. Let's start with the fries, which is an easy one. For obvious reasons, the regulations don't apply to produce that is rarely consumed raw. The FDA has provided an exhaustive list of this kind of produce and potatoes are, not surprisingly, on that list.

But what about the traditional burger trimmings. Most restaurants garnish their cheeseburgers with some combination of tomatoes, lettuce, onions and pickles. With the arrival of the produce regulations, can restaurants expect, and even demand, a greater level of safety and accountability from their suppliers? The short answer is yes. Lettuce, tomatoes, and onions are all covered produce under the act. Pickles are treated differently. Even though the regulations cover the typical salad garnish, whether or not they provide restaurants with greater guarantees of safety and accountability depends on who is growing, harvesting, packing and holding the produce before it reaches the restaurant.

The Rules Don't Apply to All Farms

The reason: The regulations only apply to farms, which are generally defined as those establishments that actually grow and harvest the produce. Facilities that only pack and hold produce must follow the new regulations if they are majority owned by a farm that grows and harvests the produce. But non-farm packing and holding facilities can choose between following the new regulations or following [current good manufacturing practices](#) generally applicable to all foods. And establishments that only hold or transport produce are not required to follow either.

What's more, not all farms are covered under the new regulations. Farms that on average sell less than \$25,000 per year of produce aren't covered by the regulations. And farms that sell an average of less than \$500,000 of food each year may seek an exemption from the regulations if the amount of food they sell each year direct to consumers, or to restaurants and retail establishments within the same state or less than 275 miles away, exceeds the amount of all other food sales. That means that the smaller the farms the restaurant sources from, the less likely it is that they

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must follow the new regulations. It also means that if produce is packaged and held by a middleman, that middleman may not have to follow the new regulations either.

Knowledge is Power

How does the restaurant owner develop the knowledge necessary to manage what enters the restaurant, and mitigate what risks to accept in sourcing produce. If the restaurant sources its produce directly from a farm covered under the new regulations, it should within the supply contract require the farm to provide regular certification that its produce has been grown, harvested, packed and held in compliance with the regulations. The same goes for produce coming from a packing and holding facility that is majority farm-owned.

But even if the produce comes from a non-farm packing and holding facility, restaurants can seek reassurance of safety in several ways. They can require certification that suppliers comply either with the produce safety regulations or with existing current good manufacturing practices. If a restaurant has strong bargaining power over its non-farm supplier, it might even consider requiring that the supplier voluntarily comply with all or some of the produce safety regulations. Or the restaurant could require that the supplier obtain certification from the grower that the produce was grown and harvested in compliance with the produce regulations or (for non-covered or exempt farms) that the grower otherwise complied with current good manufacturing practices.

If a restaurant sources its produce from non-covered or exempt farms, it may still consider asking the farm to follow basic practices that mitigate the risk of contamination. Although the produce regulations include certain larger-scale and costly measures, they also include some simple requirements that even small farms could implement cost-effectively.

- Has a restaurant representative visited the farm that grows its produce?
- If it has, did workers have access to bathrooms or handwashing facilities?
- How clean was the area where the workers sort and pack the produce?

Depending on the restaurant's bargaining power, it might be able to convince the grower to install portable toilets or handwashing stations. It could also convince the grower to clean up its sorting area. Even installing signs that instruct workers to wash their hands, or to report to a supervisor if they are sick, can go a long way toward mitigating the risk of contamination.

Different Rules for Pickles

Under the produce rules, covered produce does not include produce that will receive commercial processing that adequately reduces the presence of microorganisms of public health significance. Examples of such commercial processing include processing in accordance with the requirements of the [FDA's Acidified Foods Regulation](#), which governs pickles among other foods. So although the farm that grew the cucumbers may not have had to comply with the produce regulations, the pickle producer must still comply with the regulations applicable to the pickling process.

Those regulations, in a nutshell, require the producer to follow certain processes to ensure that its pickles are produced in a manner sufficient to destroy microorganisms that could sicken the consumer. That means that, just as with a salad supplier, restaurants should ensure that their supply contract with their pickle supplier requires the supplier to certify that the pickles were processed in compliance with the acidified foods regulation.

At minimum, restaurants should keep good records showing who grew, harvested, packed and held their produce, so that in the event of an outbreak of a foodborne illness, they can provide FDA with essential information to help determine the source. Restaurants should also ensure that their supply contracts contain provisions requiring

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suppliers to notify the restaurant promptly whenever the suppliers have reason to suspect that produce shipped to the restaurant may have become contaminated.

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